REMARKS

Claims 1-16 are pending in the application. Claims 13, 14, 15, and 16 are rejected under 35 U.S.C. § 112, second paragraph, for being indefinite, and claims 1 and 3-10 are rejected under the judicially created doctrine of obviousness-type double patenting. Additionally, the Examiner contends that the claims are directed to a number of patentably distinct species and requires an election under 35 U.S.C. § 121 to elect a single disclosed species. Applicant is further required to identify the claims that correspond to the election.

Election

The Examiner has indicated that claims 2 and 11-16 are generic to a plurality of disclosed patentably distinct species comprising one ultimate disclosed species of the following:

(a) hydroxypropyl cellulose in the first component dental peroxide gel (claim 2).

(b) sodium fluoride and potassium nitrate in the second component activator gel with the base (claim 11).

(c) potassium nitrate and tetrapotassium pyrophosphate in the second component activator gel with the base (claim 12);

(d - g) (If further elected) the multi-component activator gel of claims 13-16; and

(h). (If further elected) a first component percentage of each of carbamide peroxide and of hydrogen peroxide, as in claims 6, 7, 8, 9, or 10.

In response thereto, Applicant hereby elects the species corresponding to species (a). The claims that read on species (a) are claims 1-16.

Applicant understands that if a claim directed to an elected species is found patentable, the Examiner will continue the examination on a species-by-species basis.

Section 112, Second Paragraph, Rejection

Claims 13, 14, 15, and 16 are identified by the Examiner as containing trademark/trade names. The Examiner states that "in the present case, the

trademark/trade name is used to identify/describe hydroxypropyl cellulose and fumed silica, respectively, and accordingly the identification description is indefinite. Additionally, the Examiner indicates that the trademarks CAB-O-SIL EH-5, ART.CHERRY CH-0556, and Natural Peppermint Oil PE-05523 are recited.

In response thereto, Applicant has amended claims 13-16 as indicated above to properly recite the generic composition equivalents that correspond to each of the trademarks.

Judicially Created Doctrine of Obviousness-type Double Patenting Rejection

The Examiner has rejected claims 1 and 3-10 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 5,928,628 in view of U.S. Patent No. 6,312,670 (claims 1 and 6), wherein carbamide peroxide is kept apart from a base (alkaline or pH adjusting hydroxide) in a two part dental bleaching system (as in DAY WHITE) and the known prior art description of the mixture of hydrogen peroxide with carbamide peroxide, motivating its inclusion, in the following U.S. patents: 5,858,332; 6,368,576; 6,343,933; 6,312,701 (claims 16, 18); 6,312,666 (claim 5); 6,309,625 (claim 25); 6,306,370 (claim 10); 6,280,708 (claim 2); and 6,162,055. The Examiner indicates that in view of motivation from any of the foregoing, it would be obvious to add carbamide peroxide to the hydrogen peroxide with optimum amounts of each as taught by U.S. Patent 5,858,332 in a first component dental peroxide gel of Pellico U.S. Patent 5,928,628 (claims 1-4).

The Examiner states that U.S. Patent 6,116,900 also describes the basic element kept apart from a peroxide chamber to energize it upon mixing (as in DAY WHITE) claim 3 has both peroxides.

Applicant hereby elect to file a terminal disclaimer to overcome the judicially created doctrine of double-patenting. The terminal disclaimer shall be submitted subsequent to a notice of allowance.

Notice is hereby made that the agreement to file a terminal disclaimer is not an admission that the references cited for the obviousness-type double-patenting rejection also render the claims obvious under §103(a). The latter rejection under §103(a) was not advanced and no inference should be drawn in view of the terminal disclaimer.

Respectfully submitted,

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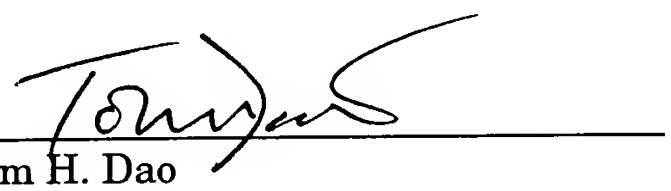
By 

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